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Patrick Byrne

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT HUNTER BIDEN, an
individual,

Plaintiff,

vs.

PATRICK M. BYRNE, an individual,

Defendant.

Case No.: 2:23-cv-09430-SVW-PD
Judge: Honorable Stephen V. Wilson
Courtroom: "10A"

Complaint Filed: November 8, 2023

**DEFENDANT'S MOTION IN
LIMINE NO. 2 TO EXCLUDE ANY
TESTIMONY OR EVIDENCE OF
PLAINTIFF'S ALLEGED SEVERE
EMOTIONAL DISTRESS
DAMAGES**

Date: November 25, 2024
Time: 3:00 p.m.
Courtroom: "10A"

[DECLARATION OF MICHAEL C.
MURPHY, ESQ., IN SUPPORT
THEREOF]

i.

**DEFENDANT'S MOTION IN LIMINE NO. 2 TO EXCLUDE ANY TESTIMONY OR EVIDENCE OF PLAINTIFF'S
ALLEGED EMOTIONAL DISTRESS DAMAGES**

TO ALL PARTIES AND THEIR ATTORNEY'S OF RECORD:

Defendant Patrick Byrne will move this Court for the issuance of the following Order *in Limine*:

1. An Order preventing Plaintiff Robert Hunter Biden, his counsel, and their witnesses from proffering any testimony related to Plaintiff's alleged severe emotional distress damages.

2. An Order that the attorneys for all parties shall instruct all parties and their agents as well as all witnesses and experts of the Court's exclusionary Order on this Motion; and

3. An Order that no attorney, party, or witness shall make any reference to the filing of this Motion, whether it be granted or denied.

This Motion is made of the following grounds:

1. Pursuant to Rule 401 of the Federal Rules of Evidence, evidence is relevant if it has a tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

2. Pursuant to Rule 403 of the Federal Rules of Evidence, the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of the following: unfair prejudice, confusing the issues, misleading the jury, wasting time, or needlessly presenting cumulative evidence.

3. Plaintiff has failed to produce any evidence supporting his alleged claim for severe emotional damages, rendering any evidence irrelevant.

4. Federal Rule of Evidence 701 prohibits lay witnesses from providing opinion testimony normally reserved for expert witnesses.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declaration of Michael C. Murphy, Esq., the pleadings and other documents on file with the Court, and upon such other and further matters that the

ii.

1 Court may consider when ruling on this Motion.

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3 Dated: November 6, 2024

LAW OFFICES OF MICHAEL C. MURPHY

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5 By: /s/ Michael C. Murphy, Esq.

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8 Michael C. Murphy, Esq.
9 Michael C. Murphy, Jr., Esq.
10 Attorneys for Defendant, Patrick
11 Byrne
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iii.

DEFENDANT'S MOTION IN LIMINE NO. 2 TO EXCLUDE ANY TESTIMONY OR EVIDENCE OF PLAINTIFF'S
ALLEGED EMOTIONAL DISTRESS DAMAGES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion in Limine seeks an Order preventing Plaintiff Robert Hunter Biden (“Plaintiff”) from introducing any evidence or testimony related to Plaintiff’s alleged emotional distress damages.

II. BACKGROUND FACTS

A. Plaintiff Failed to Provide any Proof of His Emotional Distress Damages

Plaintiff did not provide a single medical record or evidence supporting his claim for severe emotional distress damages. Moreover, Plaintiff failed to identify a single document or medical record in his draft exhibit list.

During his deposition, Plaintiff testified that he saw Dr. Alyssa Berlin for therapy, but he could not say if her treatment was in any way related to the alleged defamation.

On October 11, 2024, Plaintiff appeared for an independent neuropsychiatric evaluation with Defendant’s neuropsychological expert, Nathan E. Lavid, M.D. Dr. Lavid noted that Plaintiff did not suffer from any severe or pathologic emotional distress or emotional distress damages. Plaintiff informed Dr. Lavid that he has seen Dr. Berlin for treatment and therapy unrelated to the defamation claim since 2022. Plaintiff informed Dr. Lavid that he has seen Dr. Berlin “off-and-on” as needed. Finally, Plaintiff designated no expert including Dr. Berlin as a treating physician to rebut Defendant’s experts or findings on Plaintiff’s severe emotional distress claim.

Therefore, this Court should grant this Motion and preclude Plaintiff’s witnesses from providing any expert testimony or opinion.

III. LEGAL ARGUMENT

A. Grounds for Bringing a Motion in Limine

Motions in limine are procedural mechanisms that allow parties and the

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1 courts to limit testimony or evidence in a particular area prior to trial. United States
2 v. Heller 551 F.3d 1108, 1111 (9th Cir. 2009). The Court has inherent power to
3 grant a motion in limine to exclude evidence that could be objected to at trial.
4 Luce v. U.S., 469 U.S. 38, 41; U.S. v. Caputo, 3113 F.Supp.2d 764, 767-768 (N.D.
5 Ill. 2004).

6 Federal Rules of Evidence 103(d) and 104(c) allow the court to hear and
7 determine the question of the admissibility of evidence outside the presence of the
8 jury. Williams v. Board of Regents of Univ. Sys. of Georgia, 629 F.2d 993, 999-
9 1001 (5th Cir. 1980).

10 **B. Evidence Sought to be Excluded**

11 **1. Plaintiff Cannot Prove Emotional Distress**

12 Federal Rule of Evidence 401 states in pertinent part:

13 “Evidence is relevant if:

14 (a) it has any tendency to make a fact more or less probable
15 than it would be without the evidence; and

16 (b) the fact is of consequence in determining the action.”

17 Federal Rule of Evidence 403 states in pertinent part:

18 “The court may exclude relevant evidence if its probative value
19 is substantially outweighed by a danger of one or more of the following:
20 unfair prejudice, confusing the issues, misleading the jury,
21 undue delay, wasting time, or needlessly presenting cumulative
22 evidence.”

23 Here, Plaintiff has alleged severe emotional distress damages related to the
24 alleged defamation, but he has provided no evidence of any severe emotional
25 distress during the discovery phase. He produced no medical records or
26 testimony, other than his own self-serving testimony, of any such damages.
27 Plaintiff bears the burden to prove his emotional distress damages by a
28 preponderance of the evidence. Ninth Circuit Jury Instruction § 5.1. Any attempt

1 to put on evidence of these alleged damages will waste time.

2 2. Plaintiff's Witnesses Cannot Testify to Plaintiff's Emotional Distress

3 Lay witnesses cannot provide evidence of causation under Federal Rule of
4 Evidence 701. Federal Rule of Evidence 701 states in pertinent part:

5 "If a witness is not testifying as an expert, testimony in the form
6 of an opinion is limited to one that is:

7 (a) rationally based on the witness's perception;

8 (b) helpful to clearly understanding the witness's testimony

9 or to determining a fact in issue; and

10 (c) not based on scientific, technical, or other specialized
11 knowledge within the scope of Rule 702."

12 Defendant anticipates that Plaintiff will elicit testimony of emotional
13 distress causation from his witnesses, such as his wife, Melissa Cohen, and his
14 therapy, Dr. Alyssa Berlin who is a treating physician not properly designated by
15 the Plaintiff. Plaintiff's wife is a lay witness under Federal Rule of Evidence 701,
16 and Dr. Berlin is a therapist whom Plaintiff did not designate as an expert. While
17 they may testify to their observations, they may not provide evidence or
18 testimony that Defendant's alleged statements *caused* Plaintiff's alleged severe
19 emotional distress.

20 **C. Compliance by Counsel and Witnesses**

21 In the event that this Court grants this Motion, Defendant requests counsel to
22 instruct associates, clients, witnesses, and other persons under their control that no
23 mention or display be made in the presence of the jury of the matter that is the
24 subject of the motion. Without prior leave of court, counsel must not ask a question
25 that: (1) suggests or reveals evidence that was excluded; or (2) reasonably may be
26 anticipated to elicit testimony that was excluded.

27 **D. Plaintiff Refused to Meet and Confer**

28 Local Rule 7-3 requires the parties to meet and confer before filing motions.

1 Defendant's counsel attempted to meet and confer with opposing counsel in an
2 attempt to informally resolve these issues prior to trial. However, Plaintiff's
3 counsel seemed unable to come to an agreement on the issue(s) presented in this
4 Motion, which prompted its filing.

5 **IV. CONCLUSION**

6 Based on the foregoing, Defendant respectfully requests that this Court grant
7 this Motion.

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9 Dated: November 6, 2024

LAW OFFICES OF MICHAEL C. MURPHY

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11 By: /s/ Michael C. Murphy, Esq.

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13 _____
14 Michael C. Murphy, Esq.
15 Michael C. Murphy, Jr., Esq.
16 Attorneys for Defendant, Patrick
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